XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060647

(2)

CA 1940/96

APPEAL OF PRISONER

No. 4039/52 Name रामदयाल

Father's name महादेव आकिला उम्र चालीसवर्ष निवा सरायला (M.P.)

Residence निवा सरायला M.P. Age 30 वर्ष

Sentenced to 3 साल सश्रम कि. On 11-4-96

Under section आजीवन कारावास by अपर सत्र न्यायाधीश रायपुर

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received

3 Date on which Appeal sent 19/9/96

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 4039/52 Name रामदयाल गोंड महादेव

Confined in केन्द्रीय Jail रायपुर M.P.

No. 801 / 2 Misc / 96 Dated 30/9/1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति. सत्र न्यायाधीश (प्रथम) रायपुर M.P. 492001

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :— सत्र प्रकरण के 241/94
— अप्रमाणित निर्णय
प्रतिलिपि

Superintendent
केन्द्रीय जेल रायपुर (M.P.)
Jail

Date of receipt in office Date stamped 1/10/96

Date of receipt record to accompany the Appeal - 19

Memo of Appeal to the Appellate court Memo - 31
June - 30

No Dated 199 July - 31

Forwarded to the High Court of Madhya Pradesh July - 31
JABALPUR
Sept. 30

Date of receipt in Appellate Court 18 OCT 1996

Reg. No. 583
Receipt Clerk

(P. T. O.)

(17)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1940 of 1996

Appellant : Ramdhani

Vs.

Respondent : State of Madhya Pradesh

Smt. Meenu Banerjee, learned counsel for the appellant.

Shri Ravindra Agrawal with Shri M.P.S.Bhatia, learned P.Ls. for the respondent/State.

ORAL JUDGMENT
(07.03.2006)

Per L.C.Bhadoo, J

The accused/appellant Ramdhani has preferred this appeal questioning the legality and correctness of the judgment of conviction and order of sentence dated 11.04.1996 passed by Additional Sessions Judge, Surajpur in S.T.No. 241/94 whereby the learned Additional Sessions Judge after convicting the accused/appellant under Section 302 of the Indian Penal Code for committing the murder of Suddhu by administering poison to him, sentenced him to undergo imprisonment for life. However, co-accused Phoolkunwar was acquitted of the charges under Section 120-

[पीछे देखिये

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1940/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

B and 302 of the IPC and the accused/appellant was also acquitted of the charge under Section 120-B of the IPC.

2. Case of the prosecution is that PW-10 Heeralal gave the merg intimation P-13 in the police station – Pratappur on 16.09.1991 at about 8.30 a.m. to the effect that Suddhuram Gond was issueless and he used to reside here and there. Since last six months he was residing in his house and used to graze his bullock and he was not living in his own house and used to take meal at his residence. Yesterday at about 9.00 p.m. he saw that Suddhu and Dhaniram Gond were consuming liquor, he started taking his meal. After consuming liquor Suddhu and Dhaniram went out and from where Suddhu shouted "I do not know what kind of thing Dhaniram has administered to me" and Suddhu started rolling in pain. Thereafter he was brought inside the house and provided water. However, Suddhu died after some time and froth was coming out of his mouth. Based on this merg intimation the Station House Officer left for the scene of occurrence and after giving notice to the Panchas, prepared Panchanama P-4 of the dead body of Suddhu. The site plan of the place of occurrence P-2 was prepared and the body of Suddhu was sent for postmortem examination to the Primary Health Centre, Pratappur where Dr. A.K.Khare PW-1 conducted postmortem on the body of Suddhu and prepared postmortem report P-1. The doctor stated that cause of death cannot be given and for definite opinion viscera has been preserved and sent for chemical analysis to Forensic Science Laboratory. The investigating officer under P-5 took into possession the sample of the stool of the deceased, the soil from the place of occurrence and the leaf made

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pot in which the liquor was served to the deceased by the accused. Under P-6 one sealed plastic bottle containing pieces of heart, lungs, liver and spleen; another sealed plastic bottle containing pieces of stomach and intestines; and one sealed vial containing salt solution were taken into possession. The papers regarding revenue case were taken into possession under P-7. The site plan of the place of occurrence P-10 was prepared by the investigating officer. The viscera were sent to the Forensic Science Laboratory, Sagar from where report P-12 was received in which it was specifically mentioned that the parts of the body exhibited as 'A' and 'B' contain Aluminum Fasphoid (Sulphas) and Ethyle Alcohol. Based on this F.I.R. of Ex.P/11 was registered. After completion of the investigation charge sheet against the accused/appellant and co-accused Phoolkunwar was filed in the Court of Judicial Magistrate First Class, Surajpur who in turn committed the case to the Sessions Judge, Surguja from where the learned Additional Sessions Judge received the case on transfer for trial.

3. The prosecution in order to establish the charge against the accused/appellants examined 19 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution case and stated that they are innocent and have been falsely implicated in the crime. Learned Additional Sessions Judge, after hearing learned counsel for the respective parties convicted and sentenced the accused/appellant Ramdhani as mentioned in paragraph -1 of this

[पीछे देखिये

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

~~judgment and acquitted the co-accused Phookkunwar of the charges~~ under Section 302/120-B of the IPC.

4. Learned counsel for the accused/appellant submits that there is no evidence on record to show that in any way the accused was in possession of the poison. She further argued that in fact the liquor in question which was consumed by the deceased, was provided to the accused by co-accused Phoolkunwar and the accused was not having the knowledge that the said liquor contained any poisonous substance and in fact it was in the knowledge of co-accused who has already been acquitted, therefore, the prosecution has failed to prove the crime against the accused.

5. On the other hand, learned counsel for the State supported the impugned judgment of the trial Court.

6. Having heard learned counsel for the parties, we have perused the documentary and oral evidence available on record. Admittedly it's a case of poisoning. In order to convict the accused in a poisoning case the prosecution must establish the circumstances as has been held by the Hon'ble Apex Court in the matter of **Anant Chintaman Lagu Vs. The State of Bombay** reported in **AIR 1960 SC 500 (V 47 C 85)** that the prosecution must establish in a case of poisoning : (a) that death took place by poisoning; (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased. Though these three propositions must be kept in mind always,

[पीछे देखिये

आदेश पत्रक

मामला क्रमांक Cr.A/1940/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the sufficiency of the evidence direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence of a particular case does not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison (though not detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it.

7. Again in the matter of **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **AIR 1984 SC 1622** the Hon'ble Apex Court has held that in the cases of murder by administration of poison, the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction : (1) that there is a clear motive for an accused to administer poison to the deceased; (2) that the deceased died of poison said to have been administered; (3) that the accused had the poison in his possession; and (4) that he had an opportunity to administer the poison to the deceased.

8. Based on the above principles laid down by the Hon'ble Supreme Court if we examine the evidence available on record as to the question whether deceased Suddhu died of the consumption of the poison, PW-1 Dr. A.K.Khare has stated that on 17.09.1991 at about 9.00 a.m. he

[पीछे देखिये

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पुत्रक

मामला क्रमांक Cr.A. 1940/96 सन् ~~200~~

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

conducted postmortem on the body of Suddhu and as per his report P-1 he found that blood was coming out of the mouth and nose of the deceased and there was abrasion injury on the left leg and on opening of the body liver, spleen and kidney were found congested and viscera were preserved and he opined that definite opinion regarding death of deceased can be given after examination of the viscera. The viscera were taken into possession under P-6 which has been proved by PW-6 Pyariram who has stated that S.H.O. seized three plastic jars and one bottle of glass under P-6 in his presence. Similar is the evidence of PW-8 Jagjeetanram. PW-9 Sahdev has also stated that the plastic bottles were taken into possession under P-6. PW-17 Ramcharan Verma, Assistant Sub Inspector, has stated that the Forensic Science Laboratory's report was received on 27.12.1993 which is P-12 and according to which viscera of the deceased were found containing poison. Perusal of the F.S.L. report P-12 reveals that the bottle 'A' and 'B' which were containing the part of stomach, intestines, heart, lungs, liver and spleen of the deceased were found to be containing Aluminum Fasphoid and Ethyle Alcohal, therefore, in view of this report it is established that the viscera which were taken from the body of deceased Suddhu were containing poison of Aluminum Fasphoid and Ethyle Alcohal. Apart from the above evidence PW-3 Shivnarayan has stated that Suddhu used to graze the cattle of his father-in-law Heeralal, on the fateful day at about 8.00 p.m. accused Dhaniram came to the house of his father-in-law Heerala and made Suddhu drunk liquor, thereafter Dhaniram took Suddhu towards the kitchen garden and gave him some substance for consumption and after

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CRA 1940/96 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 7 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

consuming the same Suddhu started rolling and said that accused Dhaniram has administered poison to him, therefore call the villagers and at that time accused had ran way from there. He along with Ramsai brought Suddhu inside the house and thereafter bought Dhaniram back there. However, Dhaniram again fled from there. The accused also took away the bottle in which he had brought the liquor. Suddhu died on the spot.

9. PW-10 Heeralal in whose house deceased Suddhu used to reside has stated that three years before the date of his evidence in the evening at about 7.00-8.00 p.m. he returned to his house and saw that deceased Suddhu and Ramdhani were sitting there and Ramdhani was in possession of a liquor bottle. When he enquired from Ramdhani as to what they were doing, then Ramdhani said that we were consuming liquor and eating *makai.* He went inside the house and accused Ramdhani took Suddhu outside and offered him liquor in a pot made of leafs. After consuming the same Suddhu started shouting "Ramdhani has administered something to him in the liquor and he will not survive today" and started writhing and rolling in pain. Some villagers came to whom Suddhu informed that Ramdhani has administered something to him and he will not survive. They searched for Ramdhani but he ran away. After some time Suddhu died. He reported the matter to the police. Thereafter, Juthan informed them that Ramdhani is in his house whereupon Ramsai and Shivnarayan went there and brought Ramdhani.On enquiry Ramdhani said that Phoolkunwar had given him one and half bottle of liquor and told that he should consume the liquor out of one bottle with Suddhu and the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A./1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

remaining half bottle liquor should be provided to Suddhu and you (Ramdhani) should not consume the same. As per the instructions of Phoolkunwar he along with Suddhu consumed the liquor form one bottle and he offered the remaining half bottle of liquor to Suddhu in a leaf made pot and just after consuming the same Suddhu started rolling and died. Similar is the evidence of PW-13 Patango- the wife of Heeralal and PW-4 Ramsai, therefore, PW-4 and PW-13 have also corroborated the above evidence. Thus from the above ocular evidence as also from the F.S.L. report it is established that Suddhu died on account of consumption of poison i.e. Aluminum Fasphoid (Sulphas) and Ethyle Alcohol.

10. As far as the question whether the accused had the poison in his possession is concerned, from the evidence of eyewitness referred to hereinbefore while discussing on the earlier point it has come in evidence that accused Ramdhani came with liquor in the house of Heeralal (PW-10) where deceased Suddhu used to reside, both of them consumed the liquor together which was witnessed by PW-10 Heeralal. Deceased Suddhu also made an oral dying declaration before Heeralal PW-10, Patango PW-11 and PW-4 Ramsai that the accused provided him the liquor containing poison for consumption and after consuming the same he started feeling uneasiness and pain in the stomach and started rolling out of pain. In the evidence of PW-10 Heeralal it has also come that when Dhaniram was brought from the house of Juthan PW-13 by Ramsai and Shivnarayan, the accused made an extra judicial confession before him that the wine in question which was consumed by him and Suddhu and the other wine bottle provided to Suddhu was in fact supplied to him by

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 9 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Phoolkunwar and after consumption of the same Suddhu started rolling and died subsequently. Therefore, in view of the above, possession of the liquor in question which was consumed by the deceased is also held to be established beyond reasonable doubt.

11. Now coming to the question whether the accused had an opportunity to administer the poison to the deceased, from the evidence of witnesses referred to and discussed above namely PW-3 Shivnarayan, PW-4 Ramsai, PW-10 Heeralal and PW-11 Patango it is established that the accused administered the poison to Suddhu.

12. Now coming to the question of motive, PW-4 Ramsai has stated that Suddhu was the brother of Bodhsai. Suddhu and Bodhsai both were issueless. However, Bodhsai adopted Amarsai as his son who was brought from village - Mayapur Matguri and co-accused Phoolkunwar is the wife of Amarsai. There was a dispute between Suddhu and Amarsai with regard to the land. Amarsai did not want to give land to Suddhu and that is why there was a dispute between them. PW-14 Devnarayan Rajwade, Revenue Inspector of Settlement has stated that the police seized the copies of the revenue case No. 111-A/6-89-90 from him and he has brought the original record in the Court and the said matter relates to partition filed by deceased Suddhu. The reply Ex.P-9 was filed by Amarsai in that matter. The reply filed by Amarsai in the revenue case filed by Suddhu regarding partition shows that there was a land dispute between Amarsai – husband of co-accused Phoolkunwar and deceased Suddhu and as per the evidence of PW-10 Heeralal before whom the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 10 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused Dhaniram made extrajudicial confession to the effect the liquor in question was in fact provided by Phoolkunwar to him specifically mentioning that half bottle of liquor should be provided only to Suddhu and after consumption of the same Suddhu started rolling and died thereafter, the motive to administer poison to deceased to cause his death is established as there was a land dispute between the deceased and Amarsai – husband of co-accused Phoolkunwar who provided liquor in question to Dhaniram for being supplied to Suddhu.

13. Apart from the above circumstances from the evidence of PW-10 Heeralal it is established that when Suddhu consumed the poisonous liquor and started rolling and complaining of pain, the accused ran away from the place of occurrence and when he was brought to the house of Heeralal, he again fled from there and thereafter he was caught in the house of Juthan and again brought to the house of Heeralal where he made extrajudicial confession. This circumstance is also admissible in evidence which goes to show the involvement of the accused/appellant in the crime in question. Inference can be drawn from the above conduct of the accused/appellant that he had the knowledge that some poisonous substance was present in the half bottle of liquor for which co-accused Phoolkunwar said to have warned the appellant that he should not consume liquor of half bottle and that should be given to Suddhu only for consumption.

14. Therefore, for the foregoing discussions, we are of the considered opinion that the prosecution has been able to establish the crime in

[पीछे देखिये

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1940/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 11 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

question against the accused/appellant by legal and clinching evidence to the effect that accused Dhaniram was the person who administered poison to deceased Suddhu as a result of which Suddhu died.

15. In view of the above, we do not find any illegality or infirmity in the impugned judgment of the trial Court convicting and sentencing the accused/appellant for commission of the offence under Section 302 of the IPC. The appeal is devoid of merit and the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये